IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

INCOME TAX REFERENCE NO. 94 of 1989

The Commissioner of Income Tax ... Applicant.

vs.

Vasant J. Sheth (HUF) ..... Respondent

Mr. A. N. Kotangle for Applicant.
Mr. S. J. Mehta for Respondent

CORAM: V**. C. DAGA AND A. S. AGUIAR JJ.**

Date: 4th July, 2005.

P. C. :

1. By this reference under section 256(1) of the Income-tax Act the Tribunal has referred the following question of law for opinion at the instance of the Revenue:

   (1) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the business loss should not be set off first against the dividend income or the dividend income and the interest income and the interest income and thereafter against the long term capital gains before determining whether the assessee is entitled to any deductions under section 80K and /or 80L and what should be the

deduction under section 80T of the Income Tax Act 1961."

2. Counsel for both the sides submit that the above question has been covered by the decision of the Apex court in the case of **Commissioner of Income Tax vs. V. Venkatachalam.,** reported in [1993] 201 ITR 737 (S.C), wherein the Apex court held that (i) that the words "such income" in the main part of section 80T meant and referred to the capital gains and not the total income of the assessee. (ii) that the deduction provided for in section 80T had to be made out of the capital gains which, in this case, amounted to Rs.1,02,740/- and no question could arise of the business loss being set off against this amount of capital gains. Following the above said dictum laid by the Apex Court, the question referred to is answered in the affirmative that is in favour of the assessee and against the Revenue. This reference is disposed of accordingly with no order as to costs.

(V. C. DAGA J.)

(A. S. AGUIAR J.)

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